(31,901)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 364

JOHN A. GROSFIELD AND RICHARD CAPLIS

vs.

THE UNITED STATES OF AMERICA

ON CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT

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[fol. 1]

IN UNITED STATES CIRCUIT COURT OF APPEALS, SIXTH CIRCUIT

No. 4465

JOHN A. GROSFIELD and RICHARD CAPLIS, Appellants,

vs.

UNITED STATES, Appellee

Appeal from the District Court for the Eastern District of Michigan

Before Denison, Donahue, and Moorman, Circuit Judges

STATEMENT OF FACTS

Certificate

For the full understanding of the questions to be certified, we state the following facts:

Appellants own premises, in the business district of Detroit, consisting of a store building and in the rear a connected building suitable for garage and warehouse purposes. They rented the entire premises to Silverman for a wholesale grocery, and he used the rear building for storage. During this tenancy the prohibition officers found a still in operation on the second floor of the rear building. This proceeding was thereupon commenced by the filing of a bill against the tenant and the landlords, asking that the nuisance be abated. The landlords thereupon, and before this matter came on for hearing, ousted the tenant, and rented the rear building to a new tenant for legitimate purposes.

Upon the hearing of this matter the landlords offered to show that they had no participation in, nor knowledge of, the unlawful use by Silverman, and had no reason to be put upon notice that Silverman was permitting or causing any such unlawful use,—in other words, that they acted entirely in good faith in renting to him and had no reason to believe anything wrong until learning of the discovery of the still, and that they thereupon ousted their offending tenant.

The District Judge considered that this offered testimony was immaterial, refused to permit the testimony and en-
[fol. 2] tered an order that the rear building was a common nuisance as defined in Title 2 of the National Prohibition Act; that the nuisance be forever abated; "that said real estate shall not be occupied for any purpose for the period of one year from the date of this decree or until the further order of this court herein, commanding and directing that all persons be prohibited from entering in or upon said premises for the period of one year from the date of this decree, or until the further order of this court herein; and further commanding and directing that all persons be prohibited from taking away, moving or in any manner interfering with the contents of said premises." It was further ordered that the Marshal "close the said premises for use or occupancy for the period of one year."

It is contended by the United States that the order was justified under Section 22 of Title 2 of the National Prohibition Act; it is contended by appellants that since, under Section 21, the premises could not even be subjected to a lien for costs unless the landlords had knowledge or reason to believe that the building was being unlawfully used, Congress could not have intended to subject his property to the more complete forfeiture of Section 22, in the absence of such knowledge or reason to believe; and that, if Section 22 is to be considered as intending to give the power here exercised, the appellants' property is taken without due process of law.

Upon these facts we desire the instruction of the Supreme Court for our proper decision of the following questions of law arising therefrom:

Questions Certified

1. Is it the intent of Section 22, Title 2, to authorize a court of equity to close for a year "or until otherwise ordered by the court," premises from which the landlord has ousted the offending tenant, and this in a case where the landlord had terminated the lease promptly after he first knew or was chargeable with notice that the tenant

was using the premises for the manufacture or sale of intoxicating liquor?

2. If the first question is answered in the affirmative, then was such section in this particular a constitutional exercise of the legislative power?

Dated April 5, 1926.

A. C. Denison, Maurice H. Donahue, Chas. H. Moorman, Circuit Judges.

Filed Apr. 23, 1926. Arthur B. Mussman, Clerk.

[fol. 3] Certificate to foregoing omitted in printing.

Endorsed on cover: File No. 31,901. U. S. Circuit Court of Appeals, Sixth Circuit. Term No. 364. John A. Grosfield and Richard Caplis vs. The United States of America. (Certificate.) Filed May 5th, 1926. File No. 31,901.